(3)

C.D. 1001/-

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

W. P. NO. 3216 **OF 2004**

PETITIONER Prem Ratan Rathi, S/o Late Shri M. L. Rathi, aged about 49 yrs, Occupation Service, posted as Sub Divisional Officer, Tandula Water Resource S.Dn.No.1 Admabad, Distt. Durg [CG]

V E R S U S

RESPONDENTS

1. State of Chhattisgarh Through Secretary, Water Resources Department, Mantralaya, Dau Kalyan Singh Bhawan, Raipur[CG]

R.

P.R. No. 3239/02
Presented by Shri Kiran Rathi
dated 14-9-02

2. S. K. George, Assistant Engineer [Design], Mongra Water Resource Division Dongargaon, District Rajnandgaon [C.G.]

R.

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN NATURE OF CERTIORARI, MANDAMUS PROHIBITION AND OTHER SUITABLE WRIT OR WRITS, DIRECTION OR DIRECTIONS, ORDER OR ORDERS:

(155) (146)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.3216 of 2004

Prem Ratan Rathi

- Versus -

State of Chhattisgarh and another

POST FOR ORDER ON 15TH APRIL, 2005

Sd/-
L.C.Bhadoo
Judge

15th.4.2005

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

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- Versus -

State of Chhattisgarh and another

Present: -

Mr. Manindra Shrivastava, Senior Advocate with Mr. Afroz Khan, Advocate:	For the petitioner.
Mr. U.N.S. Deo, Govt. Advocate:	For the State/respondent No.1.
Mr. K.A. Ansari, Senior Advocate with Mr. M.K. Sinha, Advocate:	For respondent No.2.

ORDER

(Passed on 15th April, 2005)

L.C. BHADOO, J.

1. The petitioner, who is working as Sub Divisional Officer in the Water Resources Department, Government of Chhattisgarh, has preferred this writ petition under Article 226 of the Constitution of India, questioning the legality and propriety of the order dated 10-9-2004 passed by the Under Secretary, Department of Water Resources, Government of Chhattisgarh, whereby he has been transferred from the post of Sub Divisional Officer, Tandula Water Resources Sub Division No.1, Admabad to the post of Assistant Engineer (Rural), Mongra Water Resources Division, Dongargaon.

2. Brief facts leading to filing of this writ petition are that since May, 2002, the petitioner was working as S.D.O., Hasdeo Sub Minor Sub Division No.3 at Sakti, however vide order dated 7-8-2004 he was transferred to Tandula Water Resources Sub Division No.1 at Admabad in place of S.K. George, respondent No.2 herein, on administrative ground. In pursuance of that order, the petitioner handed over the charge on 23-8-2004 and he submitted his joining report Annexure P-4 on 24-8-2004 to the Executive Engineer. However, respondent No.2, in whose place the petitioner was

transferred, remain absent from the duties since 18-8-2004. Since respondent No.2 was not available, the petitioner assumed the charge of Office on 24-8-2004 and informed the Executive Engineer for suitable instructions. However, vide the impugned order dated 10-9-2004 the petitioner was again transferred to Dongargaon and respondent No.2's transfer order was cancelled. The main ground taken by the petitioner for assailing the impugned order is that respondent No.2 was able to obtain the impugned order on account of extraneous political pressure and the same has not been passed on administrative exigency. The petitioner has been transferred twice just to accommodate, earlier one Ramesh Kumar Chaudha and thereafter respondent No.2, and the said order has been passed in the garb of modification of earlier order which is bad and unsustainable in law, and an inference can be drawn that the same is passed on mala fide and arbitrary exercise of the power.

3. Return has been filed on behalf of the State/respondent No.1 that the impugned order has been passed on the ground of administrative exigency and it is denied that the same has been passed just to accommodate respondent No.2. The impugned order is an amendment, but not a fresh transfer order and the earlier order has been modified by the impugned order. Therefore, the writ petition be dismissed.

4. Respondent No.2 has also filed return and he has submitted that he has already assumed the charge on 10-9-2004, and the impugned order is a modification of the earlier order.

5. I have heard learned counsel for the parties.

6. The settled law with regard to exercise of judicial review by the High Court under Article 226 of the Constitution of India in the matter of transfer of a Government employee is that the order of transfer is an incident of service, and it is for the appropriate authority to decide that who should be transferred where. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it. This has been held by the Apex Court in the matter of **Union of India and others v. S.L. Abbas** reported in **AIR 1993 SC 2444**.

7. Again in the matter of **Rajendra Roy v. Union of India and another** reported in **AIR 1993 SC 1236**, the Apex Court held that

> "It is true that the order of transfer often causes a lot of difficulties and dislocation in the family set up of the concerned employees but on that score the order of transfer is not liable to be struck down. Unless such order is passed mala fide or in violation of the rules of service and guidelines for transfer without any proper justification, the Court and the Tribunal should not interfere with the order of transfer. It may not be always possible to establish malice in fact in a straight cut manner. In an appropriate case, it is possible to draw reasonable inference of mala fide action from the pleadings and antecedent facts and circumstances. But for such inference there must be firm foundation of facts pleaded and established. Such inference cannot be drawn on the basis of insinuation and vague suggestions."

8. In the matter of **State of U.P. and others v. Gobardhan Lal** reported in **2004 AIR SCW 2082**, the Apex Court held that

> "it is not for any Government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. An officer or a servant cannot deprive or deny the competent authority to transfer a particular officer/servant to any place in public interest and is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments."

The Apex Court further held that

> "The Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer."

9. In the matter of **Kendriya Vidyalaya Sangathan v. Damodar Prasad Pandey and others** reported in **2004 AIR SCW 5563**, the Apex Court held that

> "Transfer which is an incidence of service is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or visited by mala fide or infraction of any prescribed norms of principles governing the transfer."

10. Therefore, in view of the above law, if we look into the facts of the present case, the petitioner has raised the point that he was transferred in August, 2004, just to accommodate Ramesh Kumar Chaudha and vide the impugned order dated 10-9-2004 within a period of 15 days from joining the new place of transfer, he has again been transferred to Dongargaon, hence, the order is devoid of any administrative exigency, same is arbitrary and mala fide just to accommodate respondent No.2. Whereas, the reply of the State/respondent No.1 is that the earlier order was passed in administrative exigency and the impugned order is not a transfer order, but an amendment order of the earlier order. Vide order dated 7-8-2004 when the petitioner was transferred from Sakti, he had worked there almost two years, therefore, that cannot be said to be an immature transfer. As far as the second order i.e. the impugned order is concerned, the petitioner was transferred in place of respondent No.2, and vide the impugned order respondent No.2 has been kept on the same place and the petitioner has been transferred to Dongargaon where respondent No.2 was transferred. As respondent No.2 was transferred and he has been kept at the same place as a consequence of which the petitioner has been posted at Dongargaon in place of Admabad and that place is not at a very long distance, therefore, it cannot be termed that the impugned order is in any way a mala fide exercise of power or same has been passed to adjust respondent No.2. As has been held by the Apex Court in the above cited judgments in order to prove and establish mala fides the petitioner was required to plead with a cogent pleading that he has been transferred on mala fide exercise of power. Not only pleading the petitioner was required to establish by material how the order is mala fide. Simply because the transfer order of respondent No.2, in whose place the petitioner was transferred, has been cancelled on the ground of administrative exigency it

cannot be termed as mala fide and arbitrary or it cannot be inferred from the facts and circumstances that the said exercise by the appropriate authority is mala fide or arbitrary in any manner. There is nothing on record to show that the transfer of respondent No.2 was cancelled contrary to guidelines i.e. respondent No.2 was working there since long time.

11. The petitioner has not been able to establish that the orders dated 7-8-2004 and 10-9-2004 are in any way arbitrary or mala fide or the same have been passed just to accommodate respondent No.2 or Ramesh Kumar Chaudha.

12. In the result, I am of the opinion that the petitioner's petition is of no merit, the same is liable to be dismissed and it is hereby dismissed. In the facts and circumstances of this case, there will be no order as to costs.

Sd/-
L.C. Bhadoo
Judge

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